United Nations ST/IC/2006/48

Secretariat

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Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2005-30 June 2006**

1. The purpose of the present circular is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the United Nations Staff Regulations, and to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action with due regard to the protection of the privacy of the staff member(s) concerned. The first information circular of this kind, ST/IC/2002/25, which covered the period from January 2000 through February 2002, was provided at the request of the Accountability Panel, which was established by the Secretary-General by ST/SGB/2000/14 of 23 October 2000 (abolished and replaced by ST/SGB/2005/13 of 5 May 2005) to ensure that the Secretariat addresses the findings of its oversight review bodies from a systemic perspective, and to reinforce existing accountability mechanisms. A second information circular, ST/IC/2004/28, covering the period from March 2002 through December 2003, was issued to raise awareness and enhance transparency regarding accountability in disciplinary matters among managers and staff. A third information circular, ST/IC/2005/51, covered the period from 1 January 2004 through 30 June 2005. The present information circular covers the period from 1 July 2005 through 30 June 2006.

* The present circular will be in effect until further notice.

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I. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members[1]

2. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and *integrity*" (emphasis added).

3. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

4. Article X of the Staff Regulations, entitled "Disciplinary measures", provides in regulation 10.2 that "the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provides that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provides that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within these parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,[2] provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

5. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a

[1] For a full overview of relevant provisions, see Secretary-General's bulletin ST/SGB/2002/13, "Status, basic rights and duties of United Nations staff members", issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

[2] See the electronic Human Resources Handbook referred to in footnote 1 above. Also relevant is administrative instruction ST/AI/379, on procedures for dealing with sexual harassment.

decision on whether to pursue the matter as a disciplinary case.[3] During the period reported on, preliminary investigations were undertaken by the head of office or his/her designees, or by the Office of Internal Oversight Services, at its own initiative, or at the request of the head of office. The adoption of General Assembly resolution 59/287 has given greater authority to OIOS in this regard.

6. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter, the first step is to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member is given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it is decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

7. While the Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case, no staff member can be subjected to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate. Such referral to a Joint Disciplinary Committee may be waived when the staff member concerned and the Secretary-General agree on a disciplinary measure and the proceedings would therefore serve no valid purpose. When the seriousness of the case warrants summary dismissal, prior referral to a Joint Disciplinary Committee is not required; however, staff members who have been summarily dismissed may, at their initiative, seek a review of their case by a Joint Disciplinary Committee. All staff members subjected to disciplinary measures ultimately have recourse to the United Nations Administrative Tribunal.[4]

D. Disciplinary measures

8. Staff rule 110.3 provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof;

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[3] The head of administration in a mission will refer the case to the Department of Peacekeeping Operations, Personnel Management and Support Service, at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission.

[4] Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of these can be found in the online "Digest of Cases and Jurisprudence" (see "Administrative Tribunal", under the "Resources" column on the iSeek Intranet home page).

(h) Summary dismissal.

9. In determining the appropriate measure, every case is decided on its own merits, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

10. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are managerial, not disciplinary measures. However, they are also important measures to uphold standards of proper conduct and to promote accountability. Where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

II. Summary of practice in disciplinary cases for the period of 1 July 2005 through 30 June 2006

11. The information below refers to all cases in which the Secretary-General imposed a disciplinary measure during the reporting period.

12. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below, indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function or other particulars of the staff member are provided only when these played a role as aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

13. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation in response to allegations, the case is closed and the staff member considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In these cases a record is made and placed in the official status file.

1. Abuse of authority and harassment

(a) A staff member was found to have (i) sexually harassed another staff member; (ii) harassed a second staff member; and (iii) interfered with an official investigation into allegations against him.

Disposition: demotion by one level for the period of five years with no possibility of promotion during that time.

(b) A staff member abused his authority by improperly initiating a sexual exploitation and abuse investigation against another staff member.

Disposition: separation from service with compensation in lieu of notice.

(c) A staff member engaged in sexual and professional harassment of staff and abuse of authority as a manager.

Disposition: summary dismissal.

(d) A staff member sexually harassed a staff member under his supervision, and abused his power and authority with respect to her and other staff under his supervision.

Disposition: summary dismissal.

(e) A staff member engaged in unwelcome sexual advances, verbal and physical conduct of a sexual nature, and sexual harassment.

Disposition: summary dismissal.

2. Fraud and misrepresentation

(a) A staff member misrepresented the facts about the ownership of his personal belongings in an incident report.

Disposition: separation from service.

(b) A staff member submitted a forged invoice in support of an education grant claim; falsely certified her education grant claim; and attempted to defraud the Organization.

Disposition: summary dismissal.

3. Theft and misappropriation

(a) A staff member lent the property of the Organization to a third party without permission. The property was stolen and later sold. After the property was recovered, the staff member then lent the property to the same third party.

Disposition: written censure.

(b) A staff member stole United Nations property, which he used for his personal benefit, and then forged false receipts for the property in order to be reimbursed by a third party.

Disposition: separation from service.

(c) A staff member stole United Nations property.

Disposition: summary dismissal.

4. Sexual exploitation and sexual abuse

(a) A staff member engaged in sexual activity with a minor.

Disposition: summary dismissal.

(b) A senior manager encouraged a working environment that tolerated and/or promoted breaches of confidentiality and security, and sexual exploitation and abuse; failed to take appropriate action when evidence of wrongdoing was brought to his attention; and refused to cooperate with an official investigation.

Disposition: summary dismissal.

(c) A staff member engaged in sexual relations with a woman and two underage girls in exchange for money.

Disposition: summary dismissal.

(d) A staff member (i) sexually exploited and abused four United Nations contract workers; (ii) sexually harassed them; and (iii) accepted payment from a person in exchange for a promise for employment with the Organization.

Disposition: summary dismissal.

(e) A staff member engaged in sexual exploitation and sexual abuse of a national of the host country.

Disposition: summary dismissal.

5. Other

(a) A staff member (i) actively participated in disclosing highly confidential information; (ii) publicly discredited his supervisor and the Organization; (iii) interfered with the official activities of the Organization; and (iv) used his office equipment for purposes other than official business.

Disposition: summary dismissal.

(b) A staff member was convicted of driving under the influence of alcohol on two occasions, causing a traffic accident on one occasion and leaving the scene of the accident without providing his personal information on the second occasion.

Disposition: censure.

III. Criminal behaviour

Referral to national authorities of cases involving possible criminal conduct

14. When an investigation shows that criminal activity may have occurred, the Secretary-General may decide to refer these cases to relevant national authorities for action. During the reporting period, of the 17 cases in which the Secretary-General imposed a disciplinary measure, one case was referred to the national authorities. During the same period, the Organization also referred to national authorities one case in which the Secretary-General had imposed a disciplinary measure prior to the reporting period. In addition, at the request of national authorities, the Secretary-General decided to waive immunity from legal process in the cases of four Secretariat staff members who had been named as alleged perpetrators. The decisions to waive immunity in the preceding cases were made because immunity would have impeded the course of justice; they should not be construed as decisions on the merits of the allegations against the concerned staff members, who remain innocent until proven guilty.